IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**CHAMBER SUMMONS NO.1153 OF 2005**
**IN**
**SUMMARY SUIT NO.1472 OF 1986**

Smt.Ramdevi Malchand Bagri and others ).. Plaintiffs

Versus

M/s.Sunderdas Arjunlal and others ).. Defendants

Mr.M.Akram i/b.Hiralal Thakkar & Co. for the Plaintiffs.

Ms.Kanchan Shivkar i/b.Gajaria & Co. for the Defendants.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 6TH DECEMBER 2005**

**P.C.:**

. This Chamber Summons has been taken out by the Defendant Nos.1 and 3 for taking on record the Written Statement of the Defendants.

2. An affidavit of one Manharlal Sunderdas, Defendant No.3, has been filed contending that unconditional leave was granted to the original Defendant i.e. Defendant No.1 to contest the Suit. Defendant No.1 was expected to file its Written Statement within twelve weeks from the order dated 24th November 1986. Defendant No.1 has not so far filed the Written Statement. There is a delay of over almost eighteen years in filing the Written Statement. It appears that the Plaint was

amended sometime in 1994 and the Partners of the firm were brought on record as party Defendants. The Partners also had not cared to file their Written Statement from 1994 onwards. The only reason stated in the affidavit in support of the Chamber Summons is that the Plaint was amended in 1994 and, therefore, there is a delay of eleven years and twenty nine days in filing the Written Statement. It is further averred that since the affidavit in reply to the Summons for Judgment disclosed all the defences, filing of the Written Statement is merely a matter of form and no prejudice would be caused to the Plaintiffs if the Written Statement is taken on record.

2. The affidavit in support of the Chamber Summons does not in any manner disclose the reason for the delay in filing the Written Statement either of Defendant No.1 for almost eighteen years or of eleven years and twenty nine days in filing the Written Statement of Defendant No.3. At the bar it is submitted that it is through inadvertence that the Written Statement has not been filed by both the Defendant No.1 as well as Defendant No.3. Significantly, there is nothing on record to indicate as to why the Written Statement of Defendant No.1 has not been filed. In fact, it has wrongly been mentioned that the delay in filing of the Written Statement of Defendant No.1 is of eleven years.

3. The learned Counsel for the Plaintiffs vehemently opposes the Written Statement of Defendant Nos.1 and 3 being taken on record. She submits that Defendant No.1 was called upon by the Plaintiffs to file its Written Statement in July 1994 itself. Correspondence which ensued between the Advocates of both parties indicates that the Advocates for the Defendants informed the Advocates for the Plaintiffs that the Written Statement of their clients would be filed in due course. It is surprising that it required more than eleven years for the Defendants to realise that the Written Statement had not been filed.

4. However, with a view to prevent injustice being done to the Defendants, the Chamber Summons is allowed subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand only) each by Defendant No.1 and Defendant No.3.

5. Written Statement to be filed within two weeks from today subject to payment of costs.

6. Chamber Summons disposed of accordingly.